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AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND SECURITY
OF UNITED NATIONS AND ASSOCIATED
PERSONNEL
1-12 August 1994

REPORT OF THE AD HOC COMMITTEE ON THE WORK CARRIED OUT DURING THE PERIOD FROM 28 MARCH TO 8 APRIL 1994

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I. INTRODUCTION

1. The Ad Hoc Committee established by the General Assembly in its resolution 48/37 of 9 December 1993 to elaborate an international convention dealing with the safety and security of United Nations and associated personnel was convened in accordance with paragraph 1 of the said resolution and met at United Nations Headquarters from 28 March to 8 April 1994.

2. The Ad Hoc Committee was open to all Member States, also in accordance with paragraph 1 of resolution 48/37. 1/

3. The session was opened by Mr. Hans Corell, Under-Secretary-General, the Legal Counsel, who represented the Secretary-General and made an introductory statement.

4. Ms. Jacqueline Dauchy, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee and of its Working Group. Mr. Andronico O. Adede, Deputy Director (Codification Division, Office of Legal Affairs), acted as Deputy Secretary of the Ad Hoc Committee and of its Working Group. Ms. Mahnoush Arsanjani and Ms. Christiane Bourloyannis-Vrailas, Legal Officers and Ms. Darlene Prescott, Associate Legal Officer (Codification Division, Office of Legal Affairs), acted as assistant secretaries of the Ad Hoc Committee and its Working Group.

5. At its 1st meeting, on 28 March 1994, the Ad Hoc Committee elected its Bureau, as follows:

Chairman: Mr. Philippe Kirsch (Canada)

Vice-Chairmen: Mr. Raúl Alberto Ricardes (Argentina)
Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran)
Mr. Volodymyr D. Khandogy (Ukraine)

Rapporteur: Ms. Pascaline Boum (Cameroon)

6. Also at its 1st meeting, the Ad Hoc Committee decided to hold a brief general debate. It furthermore decided to constitute itself as a Working Group of the Whole for the consideration of the proposals before it.

7. The Bureau of the Ad Hoc Committee also served as the Bureau of the Working Group.

8. At its 1st meeting, the Ad Hoc Committee adopted the following agenda (A/AC.242/L.1):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Elaboration, pursuant to paragraph 1 of General Assembly resolution 48/37 of 9 December 1993, of an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.

6. Adoption of the report.

9. The Ad Hoc Committee, having received a request for participation in the work of the Committee and its Working Group from the Permanent Observer Mission of Switzerland, decided to accept the request.

10. The Ad Hoc Committee, having received a similar request from the International Committee of the Red Cross, also decided to grant that request.

11. The Ad Hoc Committee had before it a proposal submitted by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1 (English only)), as well as a working document submitted by Denmark, Finland, Iceland, Norway and Sweden (A/AC.242/L.3) and a note by the Secretary-General (A/AC.242/1). In addition to the above-mentioned documents, several delegations submitted to the Working Group a number of proposals, which are reproduced in the annex to the present report.

II. PROPOSALS BEFORE THE AD HOC COMMITTEE

12. In presenting the proposal contained in document A/AC.242/L.2 and Corr.1 (English only), the sponsors explained that the document had been prepared in response to the requests made by a number of delegations during the consideration of agenda item 152 at the forty-eighth session of the General Assembly entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice" and by the Chairman of the Working Group established under that item, that the work of the Ad Hoc Committee would be facilitated if there was a single working document before the Committee.

13. The joint proposal read as follows:

"Preamble

"General provisions

"Article 1

"Definitions

"For the purposes of this Convention:

"1. 'United Nations personnel' means those persons in respect of whom this Convention applies in accordance with article 2.

"2. 'United Nations operation' means an operation established pursuant to a mandate approved by a resolution of the Security Council.

"3. 'Host State' means a State in whose territory the United Nations operation is conducted.

"4. 'Alleged offender' means a person as to whom there is sufficient evidence to determine prima facie that that person has committed or participated in one or more of the crimes set out in article 11.

"Article 2

"Application of Convention

"This Convention shall apply in respect of:

"(a) Persons deployed by the Secretary-General to participate in a United Nations operation, and includes:

(i) Military personnel;

(ii) Police personnel;

(iii) Associated civilian personnel;

"(b) Persons deployed by the Secretary-General or a specialized agency or other organization or programme of the United Nations system to carry out activities in connection with a United Nations operation;

"(c) Persons deployed by any other humanitarian organization or agency to carry out activities relating to a United Nations operation where such organization or agency is operating pursuant to an agreement with the Secretary-General.

"Status of United Nations personnel

"Article 3

"Identification

"For the purposes of identifying United Nations personnel, States Parties shall cooperate with the Secretary-General to ensure that the following measures are undertaken:

"(a) The United Nations flag is hoisted in the headquarters, camps, posts and other premises and vessels of a United Nations operation and as otherwise decided by the Secretary-General or his representative in the host State;

"(b) The emblem of the United Nations operation is made known throughout the territory of the host State;

"(c) All ground, water and air transportation vehicles of a United Nations operation are marked by the emblem;

"(d) United Nations personnel wear the emblem while carrying out their functions.

"Article 4

"Privileges and immunities of United Nations personnel

"States Parties shall respect such privileges and immunities as United Nations personnel enjoy under existing international agreements and generally recognized principles of international law.

"Article 5

"Respect for laws and regulations of the host State

"Without prejudice to their privileges and immunities and the requirements of their duties, nothing in this Convention shall be construed so as to derogate from the obligation of United Nations personnel to respect the laws and regulations of the host State.

"Article 6

"Applicability of international humanitarian law

"1. In cases not covered by this Convention or by other international agreements, United Nations personnel remain under the protection of universally recognized principles of international law, in particular, norms of international humanitarian law.

"2. Nothing in this Convention shall be construed so as to derogate from the responsibility of United Nations personnel to respect international humanitarian law.

"Article 7

"Right of self-defence

"Nothing in this Convention shall be construed so as to derogate from the right of United Nations personnel to act in self-defence in accordance with relevant rules of engagement.

"Duties of States

"Article 8

"Respect for international character

"The Government of a host State and any administration exercising actual authority over territory in which a United Nations operation is conducted shall respect the exclusive international character of the responsibilities of United Nations personnel.

"Article 9

"Duty to ensure the safety and security of United Nations personnel

"1. States Parties shall recognize a duty to take all appropriate measures to ensure the safety and security of United Nations personnel. In particular, States Parties shall take all appropriate steps to protect United Nations personnel who are deployed in their territory from attacks or other acts of violence.

"2. In circumstances where a State Party is unable to exercise jurisdiction over persons responsible for attacks on United Nations personnel deployed in their territory, it shall cooperate with other States Parties, the Secretary-General and the Security Council to ensure that an alleged offender is dealt with in accordance with the provisions of this Convention.

"3. If a host State is not a State Party to this Convention, the States Parties shall nevertheless remain bound by its provisions in their relations.

"Article 10

"States to cooperate in preventing crimes against United Nations personnel

"States Parties shall cooperate in the prevention of the crimes set out in article 11, particularly by:

"(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

"(b) Exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

"Article 11

"Crimes against United Nations personnel

"1. The intentional commission of:

"(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations personnel;

"(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations personnel likely to endanger his/her person or liberty;

"(c) A threat to commit any such attack;

"(d) An attempt to commit any such attack;

"(e) An act constituting participation as an accomplice in any such attack, which includes organizing, or directing, or inciting others to commit any such attack,

shall be made by each State Party a crime under its national law.

"2. Each State Party shall make these crimes punishable by appropriate penalties which shall take into account their grave nature.

"3. Nothing in paragraphs 1 and 2 above shall derogate from the obligation of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of United Nations personnel.

"Article 12

"Establishment of jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

"(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

"(b) When the alleged offender is a national of that State;

"(c) When the crime is committed with respect to a national of that State, if that State considers it appropriate.

"2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in cases where the alleged offender is present in its territory and it does not

extradite such person pursuant to article 16 to any of the States referred to in paragraph 1 above.

"3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

"Article 13

"Communication of information regarding alleged offenders

"1. The State Party in which any of the crimes set out in article 11 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

"2. Whenever one of the crimes set out in article 11 has been committed against any United Nations personnel, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its national law, fully and promptly to the Secretary-General and the interested State or States.

"Article 14

"Measures to ensure prosecution or extradition

"1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

"2. Measures taken in accordance with paragraph 1 above shall be notified without delay to the Secretary-General and, either directly or through the Secretary-General, to:

"(a) The State where the crime was committed;

"(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person permanently resides;

"(c) The State or States of which the victim is a national;

"(d) All other States concerned;

"(e) Any relevant specialized agency or other organization, programme or agency.

"3. Any alleged offender shall be entitled:

"(a) To communicate without delay with the nearest appropriate representative of the State of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights;

"(b) To be visited by a representative of that State.

"Article 15

"Prosecution of alleged offenders

"The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

"Article 16

"Arrangements for extradition of alleged offenders

"1. To the extent that the crimes set out in article 11 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

"2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided by the law of the requested State.

"3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

"4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required, to establish their jurisdiction in accordance with article 12, paragraph 1.

"Article 17

"Mutual assistance in criminal proceedings

"1. States Parties shall afford each other the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

"2. Paragraph 1 above shall not affect the obligations arising from the provisions of any other treaty, bilateral or multilateral, which governs or will govern, in whole or part, mutual assistance in criminal matters.

"Article 18

"Fair treatment for alleged offenders

"Any person regarding whom proceedings are being carried out in connection with any of the crimes set out in article 11 shall be guaranteed fair treatment at all stages of the proceedings.

"Article 19

"Notification of outcome of proceedings

"The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties.

"Article 20

"Dissemination

"The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction and to encourage the study thereof by the civilian population, so that the provisions of this Convention may become known to the armed forces and to the civilian population.

"Dispute settlement provisions

"Article 21

"Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the

arbitration, anyone of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"Final clauses

"Article 22

"Signature

"This Convention shall be open for signature by all States.

"Article 23

"Ratification

"This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General, depository of the Convention.

"Article 24

"Accession

"This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General.

"Article 25

"Entry into force

"This Convention shall enter into force ___ days after ___ instruments of ratification or accession have been deposited with the Secretary-General.

"Article 26

"Denunciation

"A State Party may denounce this Convention by written notification to the Secretary-General.

"Article 27

"Authentic texts

"The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General."

14. The two sponsors stated that they had sought to reconcile the different approaches followed in documents A/C.6/48/L.2 and Corr.1 (English only) and A/C.6/48/L.3, which reflected their respective national positions on the matters to be considered by the Ad Hoc Committee, and proposed a draft convention on the subject consisting of 27 articles. They pointed out that articles 1 and 2 set out the definitions and the scope of application of the Convention. Articles 3 to 7 dealt with the status of the United Nations personnel and took account of the fact that the draft was intended to result in a convention between States Members of the United Nations which would not of itself bind the Secretary-General or the staff of the Organization. Articles 8 to 20 dealt with the issue of criminal responsibility for attacks on United Nations and associated personnel and were modelled on the corresponding provisions of earlier international conventions, particularly the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the 1979 International Convention Against the Taking of Hostages. The sponsors furthermore stressed that article 21 dealt with dispute settlement while articles 22 to 27 contained the final clauses. They added that a draft preamble would be elaborated at a later stage once the final shape and content of the convention had been settled.

15. In introducing the working paper contained in document A/AC.242/L.3, one of the sponsors explained that the Nordic countries had attempted to identify elements, which in their view, ought to be included in any new legally binding instrument concerning the safety and security of United Nations and associated personnel. Those elements dealt with the issues of conflict situations, United Nations personnel, general safety clause, armed conflicts, basic protection, repression of breaches, dissemination and education and reservations and accession.

16. The working document submitted by the Nordic countries read as follows:

"First element

"(Conflict situations)

"The new instrument should apply in all situations where United Nations or associated personnel are operating, be it in time of peace or during armed conflict, whether of an international or non-international character.

"Second element

"(United Nations personnel)

"The persons covered by the new instrument should comprise all personnel authorized by the United Nations to participate in a peace-keeping or a peace-enforcement operation.

"Personnel working for intergovernmental and non-governmental organizations undertaking humanitarian relief activities in areas where a United Nations operation has been launched should also be provided adequate protection.

"Third element

"(General safety clause)

"Besides the protection offered under the new instrument, United Nations and associated personnel remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. The exclusive international character of said personnel shall always be respected.

"Nothing in the new instrument should create the implication that United Nations or associated personnel constitute a legitimate target for belligerent action.

"Fourth element

"(Armed conflicts)

"The parties to an armed conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

"United Nations and associated personnel or their property shall not be made the object of attack.

"United Nations personnel shall at all times carry the distinctive emblem of the United Nations.

"Fifth element

"(Basic protection)

"United Nations and associated personnel shall enjoy, as a minimum, protection from the following acts which shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health or physical or mental well-being of persons, in particular:

(i) Murder;

(ii) Torture of all kinds, whether physical or mental;

(iii) Corporal punishment;

(iv) Mutilation;

(b) Outrages to personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishment;

(e) Threats to commit any of the foregoing acts.

"This protection is without prejudice to that afforded by other instruments or customary rules of international humanitarian law as well as to any person's right to self-defence.

"Sixth element

"(Repression of breaches)

"1. The States Parties undertake to enact and enforce any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the following acts (grave breaches), if committed against persons or property protected by the new instrument:

- Making the United Nations personnel, objects and localities the target of attack;

- Wilfully causing great suffering or serious injury to the body or health of a protected person, including rape;

- Unlawful deportation or confinement of a protected person;

- Wilfully depriving a protected person of the right of fair trial;

- The taking of hostages.

"2. Each State Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, the breaches listed in paragraph 1, and shall as a first step bring such persons, regardless of their nationality, before an international criminal tribunal having jurisdiction with respect to the alleged breaches. It may also try these persons before its own court or, in accordance with the provisions of its own legislation, hand such persons over for trial to another State Party concerned, provided such State Party has made out a prima facie case.

"3. In all circumstances, the accused persons shall benefit from the safeguards of proper trial and defence.

"Seventh element

"(Dissemination and education)

"The new instrument must provide for dissemination of the basic rules of international humanitarian law, in particular among armed forces, as well as for the teaching of those rules to all members of society. Legal advisers should as a general rule be attached to major military units.

"Eighth element

"(Reservations and accession)

"1. The new instrument should not allow for reservations to any of its provisions.

"2. The instrument should be open for accession by the United Nations and other international and regional organizations. It should also include provisions for an authority of a non-Party to undertake to follow its rules, without such an undertaking in any way implying a formal recognition of that non-Party.

"If these and other elements could be thoroughly debated and identified during the first session of the Ad Hoc Committee, the relevant elements could be cast in the form of concrete articles - many of which are already available in existing drafts - to be considered in depth during the Committee's next session, with a view to submitting them for consideration and adoption during the forty-ninth regular session of the General Assembly in 1994."

17. The Committee agreed to take as a basis for its work the joint proposal by New Zealand and Ukraine, on the understanding that the "elements" of the working paper submitted by the five Nordic countries would be examined in conjunction with the articles of the joint proposal with which they were connected.

III. GENERAL DEBATE

18. In accordance with the decision taken at its 1st meeting on the organization of its work, the Ad Hoc Committee held a brief general debate at its 1st to 5th meetings, from 28 to 31 March 1994.

19. Representatives underscored the importance of the task entrusted to the Ad Hoc Committee and expressed their appreciation to the delegations of New Zealand and Ukraine for having produced a joint text (A/AC.242/L.2 and Corr.1 (English only)) dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel. They welcomed the draft as a good basis for discussion in the Ad Hoc Committee. The contribution of the Nordic countries, which had submitted a working document (A/AC.242/L.3) to the Committee, was also welcomed. The hope was expressed that the draft to be elaborated by the Ad Hoc Committee would serve as a basis for a generally acceptable convention which would enter into force within a short period of time.

20. It was stressed that a convention on the safety and security of United Nations personnel would fill a lacuna in international law. In this connection, the point was made that there currently existed no general legal instrument dealing with the protection of United Nations personnel and the status of United Nations forces in the framework of United Nations operations. Emphasis was placed on the need to ensure that United Nations personnel were not regarded as legitimate military targets and that members of military forces participating in United Nations operations were not accorded less protection under international law than they enjoyed when operating under national command. It was observed that the draft convention before the Ad Hoc Committee dealt with two issues: the respective rights and obligations of States parties and of United Nations personnel, and the individual criminal responsibility of perpetrators of attacks on United Nations personnel. As regards the latter issue, the remark was made that the relevant provisions were largely modelled on those of existing international legal instruments and that it should therefore not prove too difficult to reach an agreement thereon. The point was also made that certain elements in the proposed draft convention might be more appropriately covered in status-of-forces agreements. It was moreover suggested that the future convention should require the inclusion, in status-of-forces agreements, of provisions on the safety and security of United Nations personnel. Emphasis was placed on the need for the future convention to conform to international law and to embody the principle of respect for national laws.

21. As regards the related questions of <u>the definition of the terms used in the convention and its scope of application</u>, the point was made that the relevant provisions should be clear and precise for the convention to be widely accepted and effectively implemented. It was suggested to extend the scope of the convention to United Nations operations mandated by the General Assembly. The view was on the other hand expressed that the scope of the convention should be confined to United Nations operations mandated by the Security Council. It was also suggested to exclude enforcement operations in any situation where the United Nations itself was a party to the conflict from the scope of applications of the instrument. The point was made that encompassing situations where the United Nations was a party to a conflict would raise the question of the

applicability of international humanitarian law to such situations. Some delegations expressed the view that the convention should cover only those operations which had been initiated with the consent of the host State. It was further observed that, in cases where there was no central Government to give its consent to a United Nations peace-keeping operation, the rights and obligations of the parties would have to be separately defined. Emphasis was placed on the need to delineate clearly the scope of application of the future convention in relation to that of the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The point was also made that the personnel to be covered by the convention should have a clear link with the United Nations. Another view was that the convention should provide personnel involved in humanitarian service a level of protection comparable to that enjoyed under international law by medical service personnel.

22. The point was made that the respective rights and obligations of the States parties and the United Nations should be clearly spelled out in the convention. The obligation of the United Nations not to intervene in the domestic affairs of the host State was highlighted and it was suggested to provide in the convention that a United Nations operation must be conducted in strict conformity with its mandate. The point was further made that United Nations personnel had the duty to abide by international law.

23. As to the crimes to be covered by the convention, it was stressed that they had to be clearly defined in order to ensure the effective application of the convention. There was the view that the determination of the "crime" and the action taken against the "offender" should be in conformity with the laws of the State or States where the relevant peace-keeping operation had been established. Attention was drawn to the need to rule out the political offence exception. The view was expressed that, once an international criminal tribunal was established, potential criminal proceedings under the convention should primarily be instituted before such a tribunal. The point was made that the question of the responsibility for attacks on United Nations personnel also involved the principle of the sovereignty of States.

24. There was the view that the convention would be incomplete if it did not deal with the transit of United Nations forces and personnel through third States and did not establish a compliance-monitoring mechanism. It was observed that the question of attacks on United Nations personnel in areas which were not under the control of a host State deserved further consideration.

25. As regards the dispute settlement clauses of the convention, the view was expressed that, if such clauses provided for resort to compulsory settlement procedures, States parties should have the option of making reservations thereto.

IV. REPORT OF THE WORKING GROUP

26. The Working Group held 12 meetings, between 28 March and 7 April 1994.

27. It initially had before it the joint proposal submitted by New Zealand and Ukraine (see para. 13 above) and the working paper submitted by Denmark, Finland, Iceland, Norway and Sweden (see para. 16 above). As the work proceeded, it received nine papers, which are reproduced in the annex to the present report.

28. In accordance with the decision of the Ad Hoc Committee (see para. 17 above), the Working Group took as the basis of its work the joint proposal submitted by New Zealand and Ukraine, on the understanding that the "elements" of the working paper submitted by the Nordic countries would be examined in conjunction with the articles of the joint proposal to which they related.

29. The Working Group proceeded in three stages. In the first stage (1st to 9th meetings, see subsection 1 below), it examined on first reading the various articles of the joint proposal. At the 9th meeting, representatives of the Office of Legal Affairs and of the Office of the United Nations Security Coordinator answered questions raised from the floor in relation to the practical and legal issues encountered by the United Nations in ensuring the safety and security of United Nations and associated personnel in the framework of United Nations operations. A transcript of that exchange of views was subsequently made available to delegations.

30. In the second stage (9th and 10th meetings, see subsection 2 below), the Working Group reviewed on second reading articles 1 and 2 of the joint proposal.

31. In a third stage, it agreed that the work would continue in the framework of two consultation groups respectively entrusted with articles 1 to 9 and 10 to 27. Mr. Wael Aboulmagd (Egypt) and Ms. Silvia Fernandez (Argentina) acted as coordinators of the consultation groups.

32. The result of the above consultations is reflected in section V below.

1. Views expressed in the course of the first reading of the joint proposal (A/AC.242/L.2 and Corr.1 (English only))

Article 1. Definition

and

Article 2. Application of Convention

33. In introducing articles 1 and 2, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) pointed out that the proposal limited the scope of the convention to those types of operations mandated by the Security Council. He noted that the proposal did not include operations mandated by the General Assembly, but that the sponsors would be prepared to accept such an inclusion. He also noted that it was a question for consideration whether the

convention should include individuals sent on mission by the Secretary-General since that would considerably expand the scope of the convention. As regards the personnel that should be covered by the convention, the sponsor indicated that an effort had been made to take into account the observation in the report of the Secretary-General (A/48/349) that, in the performance of its responsibilities, the United Nations now relied in various operations upon civilian contractors and the personnel of non-governmental organizations through contractual or other arrangements. The persons concerned were therefore covered to the extent that they were operating pursuant to an agreement with the Secretary-General.

34. The general remark was made that articles 1 and 2 set the stage for the rest of the convention since they dealt with the important question of definitions and scope of the convention.

35. Emphasis was placed on the need for absolute clarity in a convention containing penal law provisions which would have to be interpreted by domestic legal systems and should, therefore, be drafted unambiguously if it was to be applied in a uniform way. It was also noted that the convention might have to be implemented in situations where there was no effective Government - which reinforced the need for clarity.

36. Attention was also drawn to the links between the articles on definitions and the substantive articles and to the possibility that the former provisions might have to be reconsidered in the light of the latter. It was noted in this connection that some of the substantive articles might be applicable in respect of United Nations personnel involved in all types of operations while others might be relevant only to personnel involved in specific categories of operations.

37. A further issue of a general character concerned the relationship between the penal law provisions of the future convention and the law of international armed conflicts, which could both come into play in the situations under consideration.

38. The definition of the term "United Nations personnel" in paragraph 1 of article 1 was generally considered to require clarification, bearing in mind the diversity of the situations in which such personnel could be involved. The classical peace-keeping operations were, it was observed, conducted in a manner that made it possible for the Secretary-General and the host State to agree on ways and means of ensuring the safety and security of United Nations personnel through status-of-forces agreements. On the other hand, enforcement action or operations in areas where there was no effective Government could be conducted without the host State's consent or in the absence of a status-of-forces agreement. There were also cases where the operation had begun as a classical peace-keeping operation but then evolved into one requiring measures of enforcement. The point was therefore made that the term "United Nations personnel" might call for different definitions depending on the regime which was deemed appropriate in the various situations to be covered by the convention.

39. The remark was made that paragraph 1 of article 1 defined the term "United Nations personnel" by reference to article 2 which listed the various categories of personnel to be covered. However, since article 2 listed individuals who were not in fact United Nations personnel, the definition in article 1 was confusing. Some delegations expressed preference for the general definition of "United Nations personnel" proposed in the second element of the working document submitted by the Nordic States (A/AC.242/L.3, annex), which read: "The persons covered by the new instrument should comprise all personnel authorized by the United Nations to participate in a peace-keeping or a peace-enforcement operation". Another suggestion was to redraft paragraph 1 of article 1 as follows: "This Convention shall apply in respect of United Nations personnel deployed by the Secretary-General, the Security Council or the General Assembly in connection with a United Nations operation".

40. The point was further made that account should be taken of the reference in the title of the convention to "associated" personnel and that the definition should not be limited to "United Nations personnel", bearing in mind, however, the need to keep the scope of the convention within reasonable limits.

41. The listing in subparagraph (a) of article 2 was generally found acceptable. It was pointed out however that the term "deployed" was infelicitous if the intention was also to cover persons who were already in the field and became involved in the operation. The meaning of the term "associated civilian personnel", in subparagraph (a) (iii), was furthermore queried in the absence of a definition of the term. There was also a suggestion to redraft subparagraph (a) as follows: "Persons deployed by the Secretary-General to participate in a United Nations peace-keeping operation established on the basis of consent of all host States and in accordance with the status of forces agreement".

42. As regards subparagraph (b) of article 2, some delegations agreed with its general orientation subject to clarification of the wording. A number of delegations, however, queried the relationship between subparagraph (b) and subparagraph (c) of article 2.

43. As regards subparagraph (c), two different views were expressed. According to one view, the inclusion of non-governmental organizations within the scope of the convention was most appropriate first because there was no reason to deny coverage to organizations which were formally involved in a United Nations operation, and second because those organizations played an acknowledged role particularly in the humanitarian area. The point was made however that the requirement of a contractual relationship between those organizations and the United Nations should be tightened and that there should also be a link between the activities of the organizations and a particular United Nations operation. In response to those concerns, it was suggested to combine subparagraphs (b) and (c) into a single paragraph reading: "all other persons deployed by the Secretary-General in a particular operation". It was also suggested to add to paragraph (c) the following sentence: "In such cases, the organization in question shall specify that persons deployed by the United Nations or the agency form part of the United Nations personnel or the manner in which they should be identified". The view was furthermore expressed that the type of protection necessary for the personnel of non-governmental organizations might be different

from, and perhaps less extensive than, that required for United Nations personnel.

44. According to another view, subparagraph (c) ought to be deleted. The remark was made in this connection that it was difficult to include, in a convention intended to govern the conduct of States, provisions aimed at controlling the conduct of non-governmental organizations. It was also stressed that States had their own laws which protected residents or non-nationals and, consequently, the personnel of non-governmental organizations and private companies, and that the additional obligations of protection which the convention would impose on States should be limited to United Nations personnel. The comment was also made that the personnel of organizations like the International Committee of the Red Cross (ICRC), the effectiveness of which depended on a perception of absolute neutrality, were better left outside the scope of the convention.

45. Further comments made in respect of the definition of the term "United Nations personnel" included: (a) the remark that a difference should be made between those persons who were nationals of the host State and those who were not; and (b) the observation that there should be a balance between the responsibility of the host State to protect United Nations personnel and the obligation of such personnel to respect the laws and regulations of the host State.

46. As regards the definition of the term "United Nations operation" in paragraph 2 of article 1, different views were expressed.

47. According to one view, the proposed definition was too narrow inasmuch as it was limited to operations mandated by the Security Council, and thus excluded those mandated by the General Assembly, notwithstanding the fact that the General Assembly had authorized a number of United Nations operations. It was therefore suggested to encompass operations mandated by the Security Council or the General Assembly, while limiting the scope of the definition to operations under the command and control of the United Nations itself. There was, however, also the view that the scope of the convention should be confined to United Nations operations mandated by the Security Council. Some delegations felt that the operations mandated by the Secretary-General should not be left out. It was accordingly suggested to redraft paragraph 2 to read "This Convention applies to all situations where United Nations personnel operate whether in time of peace or during armed conflict", or to define the term "United Nations operation" as "an operation established pursuant to a mandate approved by the United Nations".

48. According to another view, account should be taken of the fact that there were already two conventions dealing, inter alia, with the protection of United Nations personnel, namely, the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. The convention under elaboration should therefore aim at protecting United Nations personnel in situations where they were most in danger. Concern was expressed that an overambitious text encompassing too many kinds of operations might not elicit general political acceptance and would not be rapidly ratified.

49. It was also remarked that the traditional distinctions between various types of United Nations operations were no longer valid because of the emergence of, on the one hand, hybrid and complex operations which changed in nature as they developed and, on the other hand, multidimensional operations involving military operations, humanitarian assistance, electoral assistance, human rights monitoring and development projects.

50. Some delegations expressed reservations on the terms "mandate" and "operation". They viewed the term "operation" as infelicitous because it seemed to imply a certain undetermined degree of magnitude. They also noted that, because of the narrow meaning of the term "mandate", activities conducted by United Nations agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR) might not be covered, even though there was no reason to exclude them. Those delegations expressed a preference for the approach reflected in the first element of the working document submitted by the Nordic States (A/AC.242/L.3). Concern was also expressed that the term "mandate" was one-sided and did not take into account the requirement of the consent of the receiving State. The United Nations, it was stated, was expected to bring a message of peace and to operate through peaceful means, and the consent of the receiving State was an essential basis for its action. In this connection, some delegations took the view that the convention under elaboration should only cover operations undertaken with the consent of the host State.

51. The definition of the term "host State" in paragraph 3 of article 1 was generally considered self-explanatory and acceptable. Some delegations, however, wondered whether the term "host State" would be appropriate in the case of enforcement operations.

52. The definition of the term "alleged offender" in paragraph 4 of article 1 gave rise to reservations. The word "alleged" was viewed as imposing undesirable limitations as regards extradition: for example, it excluded extradition of a convicted individual for the purpose of enforcement of the court decision. The term "evidence" was criticized for the same reason: it was remarked that some extradition treaties required only a detailed description of allegations, as opposed to the presentation of evidence, for the granting of an extradition request. It was suggested to redraft the paragraph to read: "'offender' means a person who is accused or convicted of one or more of the crimes set out in article 11".

53. The comment was also made that the definition in paragraph 4 should take into account the possibility that the offender might be a juridical person.

54. Several delegations suggested that the paragraph be deleted.

Article 3. Identification

55. In introducing article 3, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) stated that identification was crucial to the safety and security of United Nations personnel. He indicated that the concept had been borrowed from the Geneva Conventions of 1949 (in particular the Geneva Convention for the amelioration of the conditions of the wounded and sick in

armed forces in the field) and their two Additional Protocols (art. 18 of Protocol I and art. 12 of Protocol II).

56. In connection with articles 3 and following, the view was expressed that such provisions were not essential in a convention providing for the obligation to prosecute or extradite, and that their inclusion might delay the conclusion of such a convention.

57. There was general agreement that an article on identification could be included. There were, however, differences of views on how specific the article should be and on the advisability of imposing obligations on the United Nations in this area.

58. It was generally recognized that, in principle, clear identification of United Nations personnel contributed to their safety.

59. Some representatives, however, felt that the matter should be left to the discretion of the Secretary-General, inasmuch as there might be situations where identification of United Nations personnel would be detrimental to their safety: while, in the context of United Nations operations involving armed conflict, identification was necessary, the same was not always true in the case of humanitarian and relief operations. The use of the words "to ensure" in the chapeau of the article was therefore viewed as infelicitous. The remark was made that under most status-of-forces agreements, the Secretary-General had the right to use the United Nations emblem and identification and that even assuming the relevant provision was couched in terms of an obligation, there would be no difficulty, in the context of a bilateral agreement, in renegotiating the said provision if the situation on the ground changed.

60. Other delegations expressed strong preference for the retention of article 3 as proposed. In their view, the convention should require that United Nations personnel wear identification marks throughout the duration of an operation not only as a way of enhancing their security, but also for the purpose of the application of article 11. Reference was made in this context to the regulations contained in Additional Protocol I and to the fact that the personnel, premises and vehicles of non-governmental organizations involved in humanitarian operations always wore distinctive marks.

61. There was also the view that article 3 should differentiate between the types of operations to be covered.

62. Some delegations took the view that there was a link between article 3 and article 11 inasmuch as it would be difficult, in case United Nations personnel did not wear distinctive marks, to determine whether an attack had been knowingly committed against them. The prevailing view, however, was that the criminal law provisions of the convention should apply irrespective of whether the victims had been wearing the United Nations emblem or some other identification.

63. Other comments included: (a) the suggestion to include a provision on improper use of the United Nations emblem and marking; (b) the remark that the words "throughout the territory of the host State" should be replaced by "in the

area of United Nations operation"; and (c) the observation that the implementation of article 3 did not require the cooperation of the States parties and that the chapeau of article 3 should be modified accordingly. As regards the latter observation, however, the point was made that the implementation of the obligation provided for in subparagraph (b), to make known the emblem of the United Nations throughout the territory, would require the cooperation of States parties to the convention.

64. It was generally agreed that United Nations personnel should be protected at all times, whether on or off duty, during a United Nations operation.

Articles 4 and 5

65. In introducing articles 4 and 5, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) stressed that those provisions and the ones following them provided the framework for the application of the criminal law provisions contained in articles 11 to 19, the effectiveness of which they were intended to enhance. With specific reference to article 4, he emphasized that while his delegation would have preferred to retain the more elaborate formulation contained in its original working paper (A/C.6/48/L.3, annex), it had agreed to a more modest approach, on the understanding that the proposed text could be enriched through the inclusion of additional elements.

Article 4

Privileges and immunities of United Nations personnel

66. A number of delegations reserved their position on article 4 until the scope of the phrase "United Nations personnel" had been clarified. The remark was made in this context that the personnel of non-governmental organizations was obviously not entitled to privileges and immunities and that article 4 might therefore be couched in unduly broad terms.

67. Some delegations took the view that the article did not add anything to the existing obligations of States under the 1946 Convention, Headquarters agreements and status-of-forces or status-of-mission agreements. While acknowledging that the difficulties experienced in negotiating status-of-forces agreements might explain why it was felt useful to include a provision like article 4 in the convention under elaboration, they questioned the value and appropriateness of such a provision in a criminal law instrument and suggested instead that the Secretariat should make it clear to any State which consented to the carrying out of a United Nations operation in its territory that such consent implied recognition of the privileges and immunities of the United Nations personnel concerned. Reference was made in this context to Security Council resolution 868 (1993) of 29 September 1993.

68. Other delegations endorsed the general thrust of article 4 but expressed preference for the analytical approach initially proposed by Ukraine in document A/C.6/48/L.3 and for an itemization of the privileges and immunities enjoyed by the various categories of personnel, following the model of the 1946 Convention, which distinguished between "officials" and "experts on mission". The question

of the status of family members was raised in this context. It was additionally pointed out that military contingents contributed by Member States were not currently covered by the privileges and immunities accorded to experts under the 1946 Convention.

69. Drafting comments included: (a) the remark that the phrase "shall respect" weakened the relevant obligations of States; (b) the observation that the current formulation created the impression that a given State might be under an obligation to respect a treaty to which it was not a party; (c) the suggestion that the phrase "and generally recognized principles of international law" should be deleted as it was unclear and ignored the fact that privileges and immunities were a derogation from the rule of customary international law requiring respect for the laws and regulations of the host State; and (d) the observation that the proposed text seemed to mix up the rights and obligations of States and individuals.

70. Several delegations suggested including in the preamble, as a substitute for article 4, a paragraph recalling existing international instruments.

71. A proposal was furthermore made for the inclusion, either in article 4 or in article 9, of an additional paragraph reading as follows:

> "States shall not detain United Nations personnel for acts taken in performance of an enforcement or a peace-keeping mission. If United Nations personnel engaged in such a mission are captured or detained, they shall be immediately released and returned to United Nations or other appropriate authorities, and pending release they shall be treated in accordance with the highest standards of human rights and the principles and spirit of the Geneva Conventions of 1949 relating to the treatment of prisoners of war."

The general thrust of this proposal was found acceptable by most of the delegations which commented on it. Other delegations pointed out that the proposal raised certain legal problems, since two different aspects regarding detention, namely the criminal aspect and the humanitarian aspect, were not clearly distinguished. In view of the fact that the legal consequences of these two aspects were different, it was considered preferable to reflect them in separate articles.

Article 5

Respect for laws and regulations of the host State

72. A number of representatives expressed support for the idea contained in article 5. Others suggested that the matter be left in abeyance until the scope of the future convention had been clarified.

73. While some members suggested that the gist of the proposed text should be transferred to the preamble, others took the view that a substantive provision along the lines of article 5 was essential and that the current wording should be strengthened and recast in a positive form. It was pointed out in this

context that violations of the law and misconduct could be at the origin of attacks against United Nations personnel and that observance by such personnel of the local laws and regulations made it easier for the host State to discharge its obligation of protection.

74. Other comments included (a) the remark that the current text which referred only to the host State lent itself to undesirable a contrario interpretations and (b) the observation that article 5 could perhaps be merged with paragraph 2 of article 6.

Article 6

Applicability of international humanitarian law

75. In introducing the article, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) indicated that the underlying concern was to clarify the relationship between the convention under elaboration and international humanitarian law.

76. In this connection, one of the sponsors of the working document circulated under the symbol A/AC.242/L.3 stressed that the fourth element of that document spelled out the most important rule governing the conduct of States in armed conflict. After pointing out that the instrument under elaboration was not intended to deal with situations where the United Nations would be acting as a party to a conflict, he observed that States parties to a conflict were always under an obligation to distinguish between civilians and combatants and between civilian objects and military objectives, the consequence being that United Nations personnel and their property could never be made the object of attack while conducting traditional peace-keeping operations or enforcement operations and that the question posed by the Secretary-General in paragraph 22 of document A/AC.242/1 called, accordingly, for a positive reply. He added that if the United Nations, presumably further to a decision of the Security Council, assumed the status of a party to a conflict, then the normal laws of war would apply, with the opposing forces being placed on an equal footing.

77. Two general questions were raised in the context of article 6. The first was the question of the United Nations participation or non-participation in humanitarian law instruments. The remark was made in this context that if the United Nations was not a party to the Geneva Conventions, it was first because international humanitarian law did not outlaw war and second because the United Nations did not want to be seen as a belligerent; as a result, status-of-forces agreements contained a provision making international humanitarian law applicable to the particular peace-keeping operation concerned. There was also a view that if the United Nations became a party to a conflict, the Geneva Conventions could be applicable. At the same time, it was observed, humanitarian law did not necessarily afford the best possible protection to civilians and one should accordingly be wary of labelling as armed conflict any police operation.

78. The second general question which was raised in the context of article 6 was that of the interplay between the privileges and immunities of United Nations personnel and international humanitarian law.

79. A number of representatives stressed that it was difficult to take a stand on article 6 until the scope of the future convention in terms of the operations to be covered had been defined. It was observed in this context that the distinction to be made was not between peace-keeping measures and enforcement action of a police type but between those two types of operations and situations where the United Nations acted as a party to an armed conflict, for instance by sending a force to confront an aggressor. The view was also expressed that the category of United Nations personnel which required protection under the proposed convention was personnel carrying out preventive functions (peace-keeping, truce enforcement, implementation of a line of control between two warring States or factions) as opposed to enforcement and military functions. Other categories of United Nations militia who essentially undertook military action would, it was added, be governed like all belligerents by international humanitarian law.

80. Some delegations endorsed the basic thrust of article 6. Others observed that the provision was couched in terms of a saving clause and was, as such, of limited usefulness.

81. With specific reference to paragraph 1, several delegations expressed doubts about the proposed formulation. Others, while recognizing that the text could be improved, cautioned against reading too much into a clause which was only intended to provide possible subsidiary protection in cases not covered by the convention under elaboration or by other international conventions. It was pointed out that the formula appeared in the Hague Convention of 1907 and was intended to provide for situations not directly covered by international treaties. Paragraph 1, it was remarked, referred, on the one hand, to international law and, on the other, to international custom within the meaning of Article 38 of the Statute of the International Court of Justice: its value lay in its comprehensiveness and in the fact that it afforded extra protection to civilians along the lines of the Martens clause.

82. Also in relation to paragraph 1, the question was asked why the generality of the provision contained therein was limited by the phrase "In cases not covered by this Convention or by other international agreements". It was suggested to delete the phrase in question. The reference to "universally recognized principles of international law" was viewed by several delegations as vague. The phrase "norms of international humanitarian law" was also queried. The question was asked in particular whether the norms in question were intended to play a subsidiary or complementary role in relation to the convention under elaboration. The remark was also made that international humanitarian law was largely embodied in the Geneva Conventions and that since those conventions were applicable in specific circumstances, namely in the context of armed conflicts, the safeguards they provided were too narrow for the purpose of the proposed convention.

83. It was suggested to substitute for article 6 an enumeration of protective principles as contained in the fifth element of the working document circulated

under the symbol A/AC.242/L.3 - an approach which would have the advantage of identifying the safeguards which it was intended to provide while leaving open the question of the status of the operation and of the personnel involved therein.

84. It was also suggested to redraft the article to clarify that in the situation envisaged therein, the United Nations personnel remained under the protection of the Geneva Conventions of 1949 relating to the protection of victims of war.

85. Paragraph 2 of article 6 was viewed by several representatives as acceptable and useful. It was proposed to add a reference to human rights and to the United Nations Standards of Criminal Justice and Law Enforcement.

Article 7

Right of self-defence

86. In introducing the article, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) recalled that a more elaborate formulation had initially been proposed by his delegation in document A/C.6/48/L.3. The other sponsor pointed out that the reference to rules of engagement set the limits to the exercise of the right of self-defence. Both sponsors stressed that the article was meant to refer only to military personnel.

87. Several delegations questioned the need for article 7, inasmuch as it was self-evident that nothing in the future convention could be construed so as to derogate from a well-established right. Some delegations furthermore found it difficult to pronounce themselves on the proposed provision as long as the scope of the future instrument had not been defined.

88. A number of delegations called for the deletion of the phrase "in accordance with relevant rules of engagement". It was said in this connection that, while rules of engagement, as policy guidelines which set out in operational terms what the soldiers should do, had to be within the law, the proposed reference would be out of place in the instrument under elaboration. The remark was also made that rules of engagement were defined unilaterally, on a case-by-case basis, and were not necessarily made public. The question was further raised whether rules of engagement could be invoked before domestic criminal courts.

89. The above notwithstanding, several delegations saw a need to clarify the concept of self-defence and the circumstances, such as imminent danger, in which the exercise of that right was justified. It was suggested to reflect in the text the concepts of adequacy and proportionality, as well as the idea of the inadmissibility of any misuse of the right of self-defence.

Article 8

Respect for international character

90. In introducing the article, one of the sponsors of document A/AC.242/L.2 indicated that the idea reflected therein was to be found in Article 100, paragraph 2, of the Charter. It was also present in chapter IV, section 7, of the model status-of-forces agreement and in the third element of the working document circulated under the symbol A/AC.242/L.3.

91. While the basic thrust of the article was found unobjectionable, the need for it was questioned by several delegations. It was suggested that the matter be left to status-of-forces agreements. The remark was also made that the proposed text might be unduly broad, depending on the definition of the term "United Nations personnel", and that the current drafting was infelicitous as it appeared to limit the obligation to respect the international character of the responsibilities of United Nations personnel to host States. The idea that any de facto administration in a host State should be bound by the obligation in question was on the other hand viewed by several delegations as useful and worthy to be retained.

92. Some delegations suggested that the phrase "any administration exercising actual authority over territory" should be deleted from article 8.

Article 9

Duty to ensure the safety and security of United Nations personnel

93. The sponsors of document A/AC.242/L.2 explained that article 9 was the first in a series of articles dealing with crimes against United Nations personnel, and that in drafting those articles, inspiration had primarily been drawn from the 1973 and the 1979 Conventions. They pointed out that paragraph 1 of article 9 was based on the Note by the President of the Security Council circulated in document S/25493 and on the report of the Secretary-General (A/48/349). They further explained that paragraph 2 had been taken from paragraph 3 of Security Council resolution 868 (1993) and addressed the case where a State party was unable to exercise jurisdiction over persons responsible for attacks against United Nations personnel.

94. Several delegations supported the gist of article 9 but offered a number of substantive and drafting suggestions.

95. It was generally agreed that paragraph 1 was a useful provision. The paragraph, it was stated, imposed a general obligation of cooperation on all States parties to the convention whether or not they were host States; and a specific obligation of protection on the host State. In order not to cast any doubt on the general obligation of States, it was suggested to delete in the opening phrase the words "recognize a duty to ...".

96. Some delegations felt that paragraph 1 was unclear as it did not specify the types of cooperation which were envisaged. There was also the view that the implementation of the paragraph required the cooperation of the host State and, therefore, an agreement between that State and the United Nations. The following redraft was accordingly suggested: "State Parties shall, in accordance with the status-of-forces agreement, take appropriate measures for the protection of United Nations personnel." This suggestion was objected to by certain delegations on the ground that status-of-forces agreements were not concluded in all cases.

97. Other comments included: (a) the remark that paragraph 1 should take account, as did article 8, of the possibility that the operation might take place in a territory when there was no effective Government, and (b) the observation that the idea in paragraph 1 might usefully be moved to subparagraphs (a) and (b) of article 10, which dealt with similar issues.

98. One representative suggested that the phrase "with their consent" be inserted after the word "deployed" in paragraph 1. In explaining his position, he mentioned that if the scope of the convention went beyond consent operations, the future convention might not be widely accepted.

99. Some delegations called for the deletion of paragraph 2. Others found the provision useful but in need of improvement. It was first suggested to include therein a reference to the General Assembly. It was furthermore suggested that, considering the diversity of United Nations operations and the variety of circumstances in which the paragraph was to apply, a more flexible wording should be envisaged so as to allow for cooperation based upon bilateral extradition treaties, bearing in mind that extradition treaties could be more effective in certain cases. The comment was also made that, if paragraph 2 was intended to deal with the question of jurisdiction, its proper place was in article 12.

100. Some delegations felt that it would be helpful to elaborate on the kind of cooperation expected from States. Others favoured the general approach reflected in the text.

101. Other comments included: (a) the remark that a reference to the General Assembly should be included in the text, and (b) the observation that the phrase "attacks on United Nations personnel" could be replaced by "crimes listed in article 11".

102. Paragraph 3 was supported by certain delegations, subject to some drafting changes, but was found unnecessary by others, who suggested that it be deleted.

103. In support of the retention of the paragraph, the point was made that it was important to ensure that States parties to the convention remained bound by it even if the perpetrator of an attack against United Nations personnel was a national of a State not party to the convention.

104. In support of the deletion of the paragraph, the remark was made that nothing in the draft suggested that the obligations of States parties would be conditional upon the host State being a party to the convention. It was also

noted that no parallel provision appeared in similar conventions, such as the 1973 Convention, and that the inclusion of paragraph 3 in the instrument under elaboration might entail undesirable a contrario interpretations.

105. Some delegations felt that both paragraphs 2 and 3 could be deleted. In their view, the basic issue dealt with in those paragraphs was covered by extradition treaties.

Article 10. States to cooperate in preventing crimes against United Nations personnel

106. One of the sponsors of document A/AC.242/L.2 pointed out that article 10 was modelled on article 4 of the 1973 Convention and was a necessary provision in the current context.

107. Several delegations, while supporting the article, cautioned against borrowing provisions from existing conventions. They pointed out that the circumstances in which the instruments concerned were to apply differed and that attempts to adapt existing texts to the requirements of new situations might create uncertainty as to the proper interpretation of the instruments from which such texts had been taken.

108. It was suggested that the phrase "in accordance with the status-of-forces agreement" be inserted after the word "cooperate" in the chapeau of the article.

109. Other comments included: (a) the remark that, because of the nature of the convention being drafted, article 10 should provide, in the chapeau, that States shall cooperate with each other and with the United Nations; and (b) the observation that articles 9 and 10 both dealt with the duty of States to cooperate in the prevention of attacks against United Nations personnel and could therefore be merged.

Article 11. Crimes against United Nations personnel

110. One of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) explained that article 11 was modelled on article 2 of the 1973 Convention, with some adjustments.

111. As regards the word "intentional" in the opening phrase of the article, two views were expressed. Some delegations favoured the deletion of the word which could, in their view, be interpreted as requiring knowledge, on the part of the offender, of the status of the victim as a member of United Nations personnel. Concern was expressed that a link would thus be established between article 11 and article 3, with the result that unless the victim was in uniform or carrying some marking it would be very difficult to prove that his or her status was known to the offender. Also in support of the deletion of the word "intentional", the remark was made that the crimes listed in paragraph 1 were intentional in nature.

112. In favour of the retention of the word in question, attention was drawn to the commentary of the International Law Commission to the draft provision which had subsequently become article 2 of the 1973 Convention. 2/ In its commentary, the Commission explained that the word "intentional" had been used both to make it clear that the offender must be aware of the status of internationally protected person enjoyed by the victim and to eliminate any doubt regarding exclusion from the application of the article of certain criminal acts which might otherwise be asserted to fall within the scope of subparagraphs (a) and (b) such as the serious injury of an internationally protected person in an automobile accident as a consequence of negligence. The remark was also made in this context that there were other ways of establishing that the offender was aware of the status of the victim than by requiring United Nations personnel to wear the United Nations emblem.

113. Several delegations endorsed the general approach reflected in subparagraphs (a) and (b) of paragraph 1. Others called for a more detailed listing, along the lines of the fifth element contained in the working document submitted by the Nordic countries (A/AC.242/L.3), which was based on the universally accepted 1949 Geneva Conventions and was, in their view, well suited for the type of situations to which the convention was intended to apply. Concern was also expressed that offences such as attacks against the liberty of individuals might not be considered crimes in the legislation of certain States and might therefore not be extraditable.

114. More specific comments included: (1) the remark that subparagraph (a) could simply read "Any acts directed against the security of any United Nations personnel"; (2) the observation that the words "other attack upon the person" could be interpreted restrictively so as to exclude, for example, mental torture; and (3) the suggestion to include the taking of hostages in the list of crimes.

115. Subparagraphs (c) and (d) of paragraph 1 were supported by several representatives but gave rise to doubts on the part of others, who pointed out that the "threat" to commit a crime should not be covered by the convention in certain cases and might not be considered an extraditable offence. The phrase "any such attack" in the two subparagraphs was also criticized.

116. As regards subparagraph (e) of paragraph 1, some delegations questioned the desirability or the possibility of defining the concept of "complicity" through the inclusion of the words "which includes organizing, or directing, or inciting others to commit any such attack". For those delegations, the matter should be left to domestic penal law. Other delegations felt that the text should make no mention of complicity and refer only to participation. Still other delegations supported the paragraph in its current form.

117. It was suggested to provide in paragraph 1 for crimes committed by omission.

118. Paragraph 2 was supported in its current form by several delegations. The reference to the "grave nature" of the crime was however viewed as misleading and it was suggested to refer instead to "the gravity in nature of the crime". It was furthermore suggested to replace the words "appropriate penalties" by

"severe penalties", following the model of earlier conventions, and to rule out the possibility of invoking the political exception.

119. Paragraph 3 was generally supported by the delegations which commented on it. The meaning of the phrase "dignity of United Nations personnel" was however queried. It was furthermore remarked that the paragraph could be more appropriately placed in article 9 or article 10.

Article 12

Establishment of jurisdiction

120. In introducing the article, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) observed that it was based on article 3 of the 1973 Convention. Paragraph 1 was addressed to States having a primary interest in establishing their jurisdiction in a particular case. It included among those States, unlike the 1973 Convention, the State of which the victim was a national, in order to cover situations where there was no governmental authority able or willing to exercise its jurisdiction. The co-sponsor explained that the wording in subparagraph (c) was such as to leave the option to the State of which the victim was a national to establish its jurisdiction under paragraph 1 not to do so. Paragraph 2 was addressed to all States parties in the territory of which the alleged offender was present.

121. With respect to subparagraph (c) of paragraph 1, doubts were expressed as to the appropriateness of granting the State of which the victim was a national discretionary power with regard to the exercise of its jurisdiction under paragraph 1, and it was therefore suggested to delete the phrase "if that State considers it appropriate". The remark was on the other hand made that the phrase had been included in relevant provisions of other instruments, such as article 5 of the 1979 International Convention against the Taking of Hostages, to take account of the fact that some States did not recognize the principle of passive personality. It was therefore considered important to retain it in subparagraph (c). In this connection, the view was expressed that, in the particular context of the convention under elaboration, one could envisage the possibility of the phrase in question being exceptionally omitted. It was further suggested to redraft the subparagraph by providing that the State of which the victim was a national could establish its jurisdiction only if the States mentioned in subparagraphs (a) and (b) had not done so. There was also the view that subparagraph (c) allowed for the exercise of extraterritorial jurisdiction and also constituted an infringement on the sovereignty of the host State, and that it should therefore be deleted. It was proposed to replace the phrase "with respect to" by the term "against".

122. The suggestion was made that the State of habitual residence of a stateless alleged offender be included in the list of States mentioned in paragraph 1, as had been done in article 5 of the 1979 Convention. It was further proposed that the paragraph also should allow a State party to establish its jurisdiction when the crime was committed in an attempt to compel that State to do or abstain from doing any act, as provided, inter alia, in article 6 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

123. It was suggested that paragraph 2 be redrafted to expressly rule out extradition to a State which was not a party to the convention, and place, in such a case, the State in which the alleged offender was present under an obligation to establish its jurisdiction over the crime in question. Doubts were however expressed with respect to that suggestion.

124. Attention was drawn to paragraph 2 of the sixth element contained in document A/AC.242/L.3, and it was suggested to insert a paragraph along these lines in article 12. Reservations were however expressed in regard to that suggestion. Another proposal was to redraft article 12 as follows:

> "Each State Party undertakes to enact any legislation necessary to provide effective penal sanctions for persons committing any of the crimes set out in article 11."

Article 13

Communication of information regarding alleged offenders

125. One of the sponsors pointed out that the article was based on article 5 of the 1973 Convention. However, given the scope of application of the convention under elaboration, it had been considered necessary to provide that information regarding a particular crime should be communicated first to the Secretary-General, who had a primary interest in situations where United Nations personnel had been the victim of such crime.

126. The point was made that the title of article 13 did not fully correspond to its content. The article created difficulties for one representative, who pointed out that was protected by national law. Doubts were also raised as to the appropriateness of communicating information regarding a criminal investigation to the Secretary-General. Clarification was sought as to why the phrase "under the conditions provided for in its national law" was included in paragraph 2, but not in paragraph 1. In response to a question concerning the meaning of the expression "States concerned" in paragraph 1, one of the co-sponsors stated that the said expression referred to the States listed in paragraph 1 of article 12. There was the view that the expression "interested State or States" in paragraph 2 was too vague and that mention should be made only of the State of which the victim was a national. It was further suggested to delete the phrase "against any United Nations personnel" in that paragraph.

Article 14

Measures to ensure protection or extradition

127. One of the sponsors pointed out that the article was based on article 6 of the 1973 Convention, paragraph 1 of which had been divided into two paragraphs.

128. There was a proposal to insert the phrase "upon the request of the States where the offence took place" after the word "shall" in paragraph 1. Doubts were expressed about this proposal on the ground that the purpose of the

convention was to cover also cases where there was in the territory where the crime had been committed no governmental authority to exercise its jurisdiction over the crime. A suggestion was made to delete the term "extradition", based on the notion that an alleged offender should only be tried in the State where the crime had been committed. The point was made that such an approach would severely limit the effectiveness of the convention. There was the view that the paragraph should go beyond merely requiring the presence of the alleged offender for the purpose of prosecution and provide for the speedy initiation of prosecution.

129. The point was made that subparagraphs (d) and (e) of paragraph 2 were too vague, and provided for an inappropriately wide dissemination of information.

130. As for paragraph 3, the suggestion was made that it be placed in article 18, which dealt with the fair treatment of alleged offenders. It was suggested to add in subparagraph (b) the phrase "in accordance with the laws and regulations of the States in the territory of which he is present", but this suggestion gave rise to objections.

Article 15

Prosecution of alleged offenders

131. One of the sponsors pointed out that the article was based on article 7 of the 1973 Convention.

132. The point was made that the convention should clearly stipulate that the crimes to which it applied could not be considered as political acts for the purposes of prosecution. It was therefore proposed to add a sentence at the end of the article, based on article 8 of the 1979 Convention and reading as follows: "Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State." There was also a suggestion to delete the reference to extradition. This suggested deletion was however opposed on the ground that it would frustrate one of the main purposes of the convention.

133. The following addition to article 15 was further proposed:

> "A State Party may also submit the case to such international criminal tribunal as may have jurisdiction with regard to crimes alleged to have been committed."

The question was asked whether the time was ripe for the inclusion in the convention of such a provision which might discourage certain States from becoming party thereto or could be used as an excuse for deferring compliance with the obligations under the convention until the international tribunal was established. It was also observed that, under the draft statute of an international criminal tribunal being prepared by the International Law Commission, the tribunal would have jurisdiction over the crimes set forth in the convention whether or not the convention expressly referred to it. There was however also the view that it was premature to exclude at the current stage

of the discussion the possible inclusion in the convention of a reference to an international criminal tribunal. The point was made that the proposed provision could appear in an additional protocol to the convention.

Article 16

Arrangements for extradition of alleged offenders

134. One of the sponsors indicated that the article was modelled on article 8 of the 1973 Convention, subject however to the omission in paragraph 3 of the expression "the procedural provisions".

135. It was proposed to delete article 16. This proposal was objected to on the ground that such a deletion would severely diminish the effectiveness of the convention. Doubts were expressed as to the use of the term "arrangements" in the title of the article. The point was made that article 16 could only be fully implemented if there was clarity as to the crimes to which the convention applied. The question whether the convention should include a provision on multiple extradition requests was answered positively by some representatives who drew attention to article 11, paragraph 5, of the 1988 Convention, but negatively by other representatives who felt that the relevant decision should be left to the State receiving the requests for extradition, so as to avoid the establishment of a priority of jurisdiction between the requesting States. The view was expressed that it might be preferable to keep the text of article 16 as close as possible to that of article 8 of the 1973 Convention.

136. The remark was made that paragraph 1 seemed to apply only to list-based extradition treaties and should be redrafted bearing in mind the current practice regarding extradition treaties whereby extraditable offences were determined in respect of the severity of the corresponding penalty. The following text was proposed in this connection:

> "The offences set forth in article 11 shall be deemed to be extraditable offences under any extradition treaty existing between any of the States Parties. States Parties shall ensure that such offences are extraditable offences under every extradition treaty concluded between them."

Attention was further drawn to the fact that certain national legislations required a minimum penalty for an offence to be extraditable.

137. Clarification was sought as to whether paragraph 4 added anything to the provisions of article 12. One of the co-sponsors explained that paragraph 4 was aimed at facilitating extradition to the States mentioned in paragraph 1 of article 12.

Articles 17 to 20

138. In introducing the articles, one of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) indicated that the first three provisions were largely modelled on the corresponding provisions of the 1970, 1973 and 1979 Conventions,

while the basic idea in article 20 had been borrowed from article 83 of Additional Protocol I.

Article 17

Mutual assistance in criminal proceedings

139. As regards article 17, it was suggested to bring paragraph 1 in line with the corresponding provision of The Hague and Montreal Conventions by adding at the end: "The law of the State requested shall apply in all cases." That proposal met with a favourable response. Another proposal was to itemize the various forms of assistance along the lines of the United Nations Model Extradition Treaty and to provide in particular for mutual assistance in the location, restraint and forfeiture of the proceeds of criminal activity. That proposal gave rise to reservations on the ground that there was no need for the future convention to regulate the matter in detail.

140. Also in relation to paragraph 1, the remark was made that, as recognized in the United Nations Model Treaty, assistance could be valuable not only in preparing the prosecution but also in criminal investigation leading to arrest. It was suggested that paragraph 1 should cover that point and also specify that the provision of mutual assistance by States parties must be in accordance with their respective laws.

141. While there was no objection to amending paragraph 1 along those lines, the remark was made that the travaux préparatoires of the 1973 Convention made it clear that the corresponding provision of that Convention (article 10) was to be interpreted along the lines indicated in paragraph 140 above 3/ and that a reference to those travaux préparatoires might therefore be sufficient in the current context.

142. It was suggested to model paragraph 2 of article 17 on paragraph 2 of article 10 of the 1973 Convention.

143. One representative indicated in the context of the article under consideration that his country's policy was to refuse mutual legal assistance requests in cases where the death penalty might be imposed by the requesting State, unless the said State was prepared to give an assurance that the death penalty would not be imposed or carried out.

Article 18

Fair treatment for alleged offenders

144. With regard to article 18, it was suggested to include after the words "fair treatment" the phrase "in accordance with due process of law and the protection of the fundamental rights of the alleged offender". The suggestion was favourably commented upon. It was also proposed to insert in the preamble a reference to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173).

Article 19

Notification of outcome of proceedings

145. Article 19 did not give rise to any observations.

Article 20

Dissemination

146. As regards article 20, it was suggested to include after the word "Convention" in the last line the words "as well as the emblem of the United Nations". The suggestion was not objected to.

147. It was also proposed to add to the current text a sentence reading as follows: "Legal advisers should as a general rule be attached to major United Nations contingents." Some delegations supported the inclusion of this sentence. Others, while recognizing that the suggested sentence reflected actual practice, questioned its appropriateness in a document like the proposed convention and felt it preferable to leave the matter to contributing countries and to the Secretary-General.

148. A further proposal was to eliminate the latter part of the text, beginning with the words "so that ...".

Article 21

Dispute settlement provisions

149. In introducing the article, one of the sponsors of document A/AC.242/L.2 indicated that, while the current draft reflected the sponsors' preferred position, they accepted that it might prove necessary in order to enhance the acceptability of the future convention to insert in the text paragraphs modelled on paragraphs 2 and 3 of article 16 of the 1979 Convention, which allowed States to make a reservation in relation to paragraph 1 of the article.

150. Several representatives expressed preference for article 21 as proposed. Others found it advisable, in the interest of flexibility and to increase the level of participation in the future instrument, to follow the model of the 1973 Convention. A third position was that the reference to the International Court of Justice should be retained only if both or all the parties to the dispute were also party to its Statute and accepted the jurisdiction of the Court with reference to the dispute concerned.

151. It was furthermore proposed to insert in article 21 a paragraph borrowed from article 30 of the 1946 Convention on the Privileges and Immunities of the United Nations which read as follows:

"If a dispute arises between the United Nations on the one hand and a State Party on the other hand concerning the interpretation or application of this Convention, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties."

152. Several delegations supported the proposed addition or found it worthy of further consideration, while other delegations did not support that proposal.

Articles 22 to 27 (Final clauses)

153. One of the sponsors of document A/AC.242/L.2 and Corr.1 (English only) indicated that the following changes should be made in articles 22 to 27:

Article 22

Signature

- insert at the end ", until ... 199..., at the United Nations Headquarters in New York";

Article 23

Ratification

- eliminate "depository of the Convention";

Article 24

Accession

- add at the end of the text, "of the United Nations";

Article 25

Entry into force

- add at the end of the text "of the United Nations" and insert a new paragraph reading:

"2. For each State ratifying or acceding to the Convention after the deposit of the ... instrument of ratification or accession, the Convention shall enter into force on the ... day after the deposit by such State of its instrument of ratification or accession."

Article 26

Denunciation

- add at the end of the text "of the United Nations" and insert a new paragraph reading:

"2. Denunciation shall take effect ... months following the date on which notification is received by the Secretary-General of the United Nations."

- insert a new article 26 bis reading:

"Information

"The Secretary-General of the United Nations shall inform all States, inter alia:

(a) Of signature to this Convention, of the deposit of instruments of ratification or accession in accordance with articles 22, 23 and 24 and of notification made under article 26;

(b) Of the date on which this Convention will enter into force in accordance with article 25."

Article 27

Authentic texts

- add at the end of the text:

"of the United Nations, who shall send certified copies thereof to all States."

154. Three main questions were raised in the context of the final clauses.

155. The first was whether the United Nations should have the possibility of becoming a party to the future convention. Some representatives answered it positively and others negatively. Still others observed that none of the provisions under consideration was couched in terms of rights or obligations of the United Nations and that, in any event, the position of the United Nations would, for all practical purposes, be comparable to that of a party. The point was made that the inclusion of a dispute settlement provision along the lines suggested in paragraph 151 above would be consistent with this view.

156. A second question was whether the future convention should contain a clause excluding reservations. Different views were expressed in this connection.

157. A third question concerned the possibility of extending the application of the proposed convention to non-parties such as de facto authorities fighting against a State Party. Reference was made in this context to article 96 of

Additional Protocol I. The idea was found interesting by some representatives but gave rise to objections on the part of others who questioned its compatibility with the law of treaties.

158. Several proposals for the inclusion of new articles were informally circulated in the Working Group. They concerned: (a) the withdrawal by a State party of nationals involved in a United Nations operation, in case of threat to their life and security (see annex, first proposal under section D); (b) compensation in the event of death, injury or illness (see annex, second proposal under section D); (c) the requirement that United Nations personnel confine themselves to the mandate approved by United Nations resolutions (see annex, section E); and (d) the limitation of the application of the convention to future peace-keeping operations (see annex, section H).

159. Some delegations felt that it was important to include in the text of the future convention provisions on just and equal compensation in the event of death, injury or illness of United Nations personnel attributable to the performance of official duties on behalf of the United Nations, and on the right of a State party, in case of threat to life and security of United Nations personnel resulting from serious violations of the convention or from the changing of the mandate of the operation, to recall its citizens participating in such operation. They considered the inclusion of such provisions as additional guarantees for the social and physical protection of United Nations personnel, which would contribute to enhancing the carrying out of United Nations operations.

2. Views expressed in the course of the second reading of the joint proposal (A/AC.242/L.2 and Corr.1 (English only))

Article 1. Definition

and

Article 2. Application of Convention

160. At the outset of the second reading, the Chairman stressed that emphasis had been placed, during the first reading, on the need for clarity, particularly as regards the scope and the definitions, and on the links between the definitional article and substantive provisions, with particular reference to the question whether the future convention should provide for a unified regime for all personnel.

161. As regards the definition of the term "United Nations personnel", he observed: (1) that the identification of the categories of personnel to be covered was a prerequisite to any meaningful discussion of substantive provisions concerning, for instance, privileges and immunities; (2) that the term "associated personnel" had been viewed as ambiguous; (3) that the word "deployment" lent itself to interpretations whereby personnel working in the field prior to the start of the operation would be excluded; (4) that it was not clear whether personnel contributed by Member States should be covered; (5) that there was some uncertainty as to the exact purpose of subparagraphs (b) and (c)

of article 2, even though, in his own view, subparagraph (b) covered personnel within the United Nations system and subparagraph (c) personnel outside that system, such as the staff of intergovernmental and non-governmental organizations and of private companies; (6) that the question whether the convention should apply to personnel of non-governmental organizations had been answered negatively by certain delegations and positively by other delegations, some of which, however, insisted on the requirement of an agreement between the United Nations and the organization concerned; and (7) that there were also different views on whether private companies involved in United Nations operations should be covered.

162. With respect to the definition of the term "United Nations operation", the Chairman noted that the following questions arose: (1) should the application of the convention extend to operations mandated by the General Assembly or more generally to all United Nations operations; (2) should enforcement operations or Chapter VII operations be covered; (3) in the affirmative, should the coverage be limited to operations conducted under the command and control or supervision of the United Nations; (4) in the framework of enforcement operations or Chapter VII operations, again assuming they were brought within the ambit of the convention, should the applicable criminal law regime be that of the convention under elaboration or that applicable to international armed conflicts; (5) should hybrid and multidimensional operations be covered by the convention and in which way; and (6) should the convention be applicable only in the framework of operations conducted with the consent of the host State and under status-of-forces agreements.

163. As regards the term "United Nations personnel", many delegations agreed that it should be defined so as to encompass all persons who became involved in an operation and not only those who were dispatched to a specific theatre of operation, for example, forces invited by the Secretary-General to participate or assist in peace-keeping operations should enjoy the same protection under the convention as other components. The remark was made in this connection that the two categories worked side by side to achieve the same goal and should therefore receive the same treatment and equal protection. In this perspective, the term "deployed" was viewed as insufficient; it was suggested that the term "invited" be added. The comment was also made that electoral observers should be expressly mentioned in subparagraph (a), given the importance of this rule in carrying out peace-keeping operations.

164. Some delegations supported the approach taken by the Nordic States to the definition of the term "United Nations personnel" (see annex, sect. C). They noted that the definition covered, on the one hand, the categories of personnel identified in the 1946 Convention on the Privileges and Immunities of the United Nations, namely "officials" and "experts on mission", and, on the other hand, categories of personnel in the employ of governmental, intergovernmental, international or non-governmental entities which were assigned specific functions by the United Nations or any of its specialized agencies, other organs or programmes by way of contract or agreement.

165. As regards subparagraphs (b) and (c) of article 2, emphasis was placed on the need to tighten the requirement of a link with the United Nations, particularly in the case of non-governmental organizations.

166. As regards the term "United Nations operation" dealt with in paragraph 2 of article 1, some delegations favoured a narrow approach whereby only those operations conducted with the consent of the host State and in accordance with a status-of-forces agreement would be covered. They took the view that the requirement of consent would resolve a number of complex problems and considerably simplify the elaboration of the convention. They therefore supported the approach reflected in the proposal reproduced in section A of the annex.

167. The question was raised whether only operations authorized by the Security Council should be considered or whether certain operations authorized by the General Assembly should also be covered.

168. Other delegations advocated a broad approach whereby the convention would cover, in addition to peace-keeping operations authorized by the Security Council or the General Assembly, operations authorized by the Security Council under Chapter VII of the Charter, it being understood however that only those operations conducted under the control and supervision of the United Nations would be included. Those delegations observed that the host State's consent and the existence of a status-of-forces agreement were unsuitable criteria, bearing in mind that a number of United Nations operations did not require the consent of the State and that even classical peace-keeping operations had sometimes to be launched ahead of the conclusion of a status-of-forces agreement. The point was made that the convention would be of little utility if confined to consent operations. Other delegations suggested that the convention might apply to all United Nations personnel irrespective of whether a specific operation had been mandated.

169. It was generally agreed that if the scope of the convention were to extend to United Nations activities involving armed conflict, then the relationship between the criminal law provisions of the convention and the law applicable to international armed conflict would have to be clarified so as to avoid overlaps. The second proposal reflected in section G of the annex was found useful in this respect by several representatives who noted that, under the proposal, the convention would not apply in respect of an operation: (a) authorized by the Security Council as an enforcement action; (b) involving an international armed conflict to which common article 2 of the 1949 Geneva Conventions applied; and (c) involving United Nations personnel as a party to the conflict. Some delegations, on the other hand, pointed out that the reference to operations authorized by the Security Council as enforcement actions was unhelpful because the Security Council often refrained from specifying if it was acting under Chapter VI or under Chapter VII of the Charter. The remark was also made that, instead of referring to operations to which common article 2 of the 1949 Geneva Convention applies, one should rather talk of operations to which the law of international armed conflict was applicable. It was further stated that no distinction should be made between operations involving international armed conflict and operations involving internal armed conflict.

170. As regards paragraph 3 of article 1, some delegations suggested that the term "host State" should be defined as follows: "'host State' means a State with whose consent the United Nations operation is conducted in its territory".

171. As for paragraph 4 of article 1 on the definition of "alleged offender", many delegations supported its deletion.

V. DECISIONS CONCERNING THE CONTINUATION OF THE WORK

172. Pursuant to the authorization contained in paragraph 2 of General Assembly resolution 48/37, the Ad Hoc Committee decided to hold a further session from 1 to 12 August 1994.

173. The Committee agreed to take, as a basis for its work at that session, the negotiating text reproduced in paragraph 174 below, on the understanding that it was only intended to serve as a negotiating text without committing or prejudicing the position of any delegation on any of its provisions. Some delegations expressed reservations about particular provisions in the negotiating text and reserved their right to introduce new provisions at the next session. The negotiating text consists of articles 3 to 27. There was a general discussion on articles 1 and 2, but no text of those articles was included in the negotiating text.

174. The negotiating text reads as follows:

"NEGOTIATING TEXT

"Article 3

"Identification

"1. States Parties shall recognize the right of United Nations personnel to display, within the territory in which a United Nations operation is conducted, the United Nations flag on United Nations Headquarters, camps or premises, vehicles, vessels and otherwise as decided by the Secretary-General or his representative in the host State.

"2. Vehicles, vessels and aircraft of the United Nations operation shall carry, as appropriate, a distinctive United Nations identification.

"3. All United Nations and associated personnel shall be issued by the United Nations appropriate identification documents indicating their participation in, or affiliation to, the relevant United Nations activity in accordance with United Nations procedures and guidelines.

"4. States Parties should take appropriate measures to prevent the unauthorized use of the United Nations flag, emblem or distinctive signs.

"Article 4

"Privileges and immunities of United Nations personnel

"1. The host State and the United Nations shall conclude as swiftly as possible an agreement on the status of the operation and all personnel engaged in the operation, on the basis of the Convention on the Privileges and Immunities of the United Nations of 1946 and other existing international instruments, covering, inter alia, military and police personnel of national contingents assigned to the United Nations operation, who shall have the privileges and immunities specifically provided for in such agreement.

"2. Pending the conclusion of such agreement the host State shall respect fully the international status of the operation and its personnel.

"Article 5

"Respect for laws and regulations of the host State

"1. Without prejudice to their privileges and immunities and the requirements of their duties, United Nations and associated personnel shall:

(a) Refrain from any action or activity incompatible with the impartial and international nature of their duties;

(b) Respect the laws and regulations of the host State.

"2. The Secretary-General or his representative shall take all appropriate measures to ensure the observance of these obligations.

"Article 6

"Applicability of international humanitarian law

"Nothing in this Convention shall in any way affect the application of international humanitarian law and international human rights law in relation to the protection of United Nations operations and personnel or the responsibility of such personnel to respect such law.

"Article 7

"Right of self-defence

"Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

"Article 8

"Respect for international character

"States Parties and any authority exercising actual control over territory in which a United Nations operation is conducted shall respect the exclusively international character of the responsibilities of United Nations personnel.

"Article 9

"Duty to ensure the safety and security of United Nations personnel

"1. States Parties shall take all appropriate measures to ensure the safety and security of United Nations personnel. In particular, States Parties shall take all appropriate steps to protect United Nations personnel who are deployed in their territory from attacks or other acts of violence referred to in article 11 of this Convention.

"2. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

"3. If a host State is not a State Party to this Convention, the States Parties shall nevertheless remain bound by its provisions in their relations.

"Article 9 bis

"Duty to release or return United Nations personnel captured or detained

"If United Nations personnel engaged in a United Nations operation are captured or detained, they shall be immediately released and returned to United Nations or other appropriate authorities, and pending release they shall be treated in accordance with the highest standards of human rights and the principles and spirit of the Geneva Conventions of 1949 relating to the treatment of prisoners of war.

"Article 10

"Prevention of crimes against United Nations personnel

"States Parties shall cooperate in the prevention of the crimes set out in article 11, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

"Article 11

"Crimes against United Nations personnel

"1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person of liberty of any United Nations personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations personnel likely to endanger his/her person or liberty;

(c) A threat to commit any such attack;

(d) An attempt to commit any such attack;

(e) An act constituting participation as an accomplice in any such attack or attempt to commit such attack, including organizing, ordering or inciting others to commit or attempt to commit such attack

shall be made by each State Party a crime under its national law.

"2. Each State Party shall make these crimes punishable by appropriate penalties which shall take into account their grave nature.

"Article 12

"Establishment of jurisdiction

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

"2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or abstain from doing any act.

"3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

"4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 16 to any of the States Parties referred to in paragraph 1 and 2 above.

"5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

"Article 13

"Communication of information

"1. Under the conditions provided for in its national law, the State Party in which a crime set out in article 11 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

"2. Whenever a crime set out in article 11 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General and the State or States concerned.

"Article 14

"Measures to ensure prosecution or extradition

"1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

"2. Measures taken in accordance with paragraph 1 above shall be notified without delay to the Secretary-General and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his/her habitual residence;

(c) The State or States of which the victim is a national; and

(d) All other States concerned.

"3. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights;

(b) To be visited by a representative of that State or those States.

"Article 15

"Prosecution of alleged offenders

"The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

"Article 16

"Extradition of alleged offenders

"1. To the extent that the crimes set out in article 11 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

"2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes.

Extradition shall be subject to the conditions provided by the law of the requested State.

"3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State.

"4. Each of the crimes set out in article 11 shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 12, paragraph 1.

"Article 17

"Mutual assistance in criminal matters

"1. States Parties shall afford each other, in accordance with their respective laws, the greatest measure of assistance in connection with investigations undertaken or proceedings brought in respect of the crimes set out in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

"2. The provisions of paragraph 1 above shall not affect obligations concerning mutual assistance embodied in any other treaty.

"Article 18

"Fair treatment for alleged offenders

"Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 11 shall be guaranteed fair trial and full protection of the rights of the alleged offender at all stages of the proceedings.

"Article 19

"Notification of outcome of proceedings

"The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties.

"Article 20

"Dissemination

"The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

"Article 21

"Dispute settlement provisions

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

"2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

"3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

"Article 22

"Signature

"This Convention shall be open for signature by all States, until _____ 199__ , at the United Nations Headquarters in New York.

"Article 23

"Ratification, acceptance or approval

"This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

"Article 24

"Accession

"This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

"Article 25

"Entry into force

"1. This Convention shall enter into force _____ days after _____ instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

"2. For each State ratifying or acceding to the Convention after the deposit of the _____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the _____ day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

"Article 26

"Denunciation

"1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

"2. Denunciation shall take effect _____ months following the date on which notification is received by the Secretary-General of the United Nations.

"Article 26 bis

"Notification by the Secretary-General

"1. The Secretary-General of the United Nations shall inform all States, inter alia:

(a) Of signature to this Convention, of the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 22, 23 and 24 and of notification made under articles 21 and 26;

(b) Of the date on which this Convention will enter into force in accordance with article 25.

"Article 27

"Authentic texts

"The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States."

Notes

1/ For the list of the members of the Committee, see A/AC.242/INF/1.

2/ Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10 (A/8710/Rev.1), p. 94.

3/ See Official Records of the General Assembly, Twenty-eighth Session, Sixth Committee, 1437th meeting, para. 49.

ANNEX

Proposals submitted to the Working Group in relation to the joint proposal submitted by New Zealand and Ukraine (A/AC.242/L.2 and Corr.1 (English only))

A. Proposals by India

1. Article 1

Delete paragraph 4.

2. Article 2

(a) Replace subparagraph (a) by the following:

"Persons deployed by the Secretary-General to participate in the United Nations peace-keeping operation established on the basis of consent of all host States and in accordance with the status-of-forces agreement".

(b) Clarify the term "associated civilian personnel" mentioned in article 2 (a) (iii).

(c) Delete subparagraphs (b) and (c).

3. Article 3

(a) Redraft the chapeau of article 3 in a way to authorize and require the Secretary-General to undertake activities mentioned in article 3 without obliging the host State to do the same.

(b) Replace the phrase "throughout the territory of the host State" in subparagraph (b) by the phrase "in the area of operations".

4. Article 4

Delete the phrase "generally recognized principles of international law" at the end of the article.

5. Article 6

The article should be redrafted to clarify that in the situation envisaged under article 6, the United Nations personnel remain under the protection of the Geneva Conventions of 1949 relating to the protection of victims of war.

6. Article 9

Delete paragraphs 2 and 3 and rephrase paragraph 1 as follows:

"States Parties shall, in accordance with status-of-forces agreements, take appropriate measures for the protection of United Nations personnel".

7. Article 10

Insert the words "in accordance with the status-of-forces agreement" after the word "cooperate" in the chapeau of the article.

8. Article 11

This article may be retained after suitable modification subject to the amendment proposed for article 2 above.

Retain the words "intentional" and "violent" in the chapeau and subparagraph (b), respectively; and delete the words "which includes organizing, or directing, or inciting others to commit any such attack" from subparagraph (e).

9. Article 12

Delete subparagraph 1 (c).

The provision that the troop-contributing country whose national has been allegedly attacked may assume jurisdiction for trying alleged offenders would be an infringement of the sovereignty of the host country.

10. Articles 14, 15 and 16

Delete all references to "extradition" wherever they appear.

The offender must be tried under the law of the host State concerned.

11. Article 21

In article 21 dealing with dispute settlement, reference to the jurisdiction of the International Court of Justice should be retained only if both or all the parties to the dispute are also party to its Statute and accept the jurisdiction of the Court with reference to the dispute concerned.

B. Proposal by Austria, Denmark, Finland, the Netherlands, Norway and Sweden

"Article ...*

"Basic protection and responsibility

"1. United Nations and associated personnel shall enjoy, as a minimum, protection from the following acts which shall remain prohibited at any time and in any place whatsoever:

- Making the personnel, their objects and localities the target of attack;

- Detention of the personnel;

- Violence to the life, health or physical or mental well-being of the personnel, in particular:

  (i) Murder;

  (ii) Torture of all kinds, whether physical or mental;

  (iii) Rape;

  (iv) Mutilation;

  (v) The taking of hostages;

  (vi) Collective punishment;

- Attempt to commit any of the foregoing acts.

"2. If United Nations and associated personnel become engaged in an armed conflict [as a party to that conflict], the international rules applicable to such conflicts apply.

"Nothing in this Convention shall be construed so as to derogate from the responsibility of United Nations and associated personnel to respect international humanitarian law.

"3. The protection provided under the present Convention is without prejudice to that afforded by:

"* The articles dealing with the establishment of jurisdiction over crimes against United Nations and associated personnel may refer directly to paragraph 1 of this article.

- Existing international agreements and generally recognized principles of international law concerning privileges and immunities of United Nations and associated personnel;

- The principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."

C. Proposals by Denmark, Finland, Norway and Sweden

"Article 1. (Definitions)

"For the purposes of the present Convention:

"1. 'United Nations personnel' means any persons that is employed by, seconded to, on loan to, or subcontracted by the United Nations or any of its specialized agencies, other organs or programmes, as staff member or expert on mission, whether in civilian, police or military capacity.

"2. 'Associated personnel' means any person employed by, seconded to, on loan to or subcontracted by a governmental, intergovernmental, international or non-governmental entity to perform functions assigned to that entity by the United Nations or any of its specialized agencies, other organs or programmes, in a contract or an agreement with that entity.

"3. 'United Nations operation' means ... (definition only needed if the term is used in subsequent articles)

"4. 'Host State' means ...

"5. '(Alleged) offender' means ...

"Article 2. (Scope)

"This Convention shall apply in all situations when and where United Nations and associated personnel are deployed, be it in time of peace or during an armed conflict."

D. Proposal by the Russian Federation

Insert two new articles, as follows:

"In case of threat to life and security of the United Nations personnel resulting from serious violations of the present Convention or from the changing of the mandate of the United Nations operation, a State Party has a right, after consulting with the Secretary-General of the United Nations, to withdraw its citizens participating in such operation."

"The United Nations personnel participating in United Nations operations shall be entitled to just and equal compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations."

E. Proposal by China

Insert a new article 5 bis, as follows:

"Article 5 bis

"Confinement to the mandate approved by the United Nations resolutions

"Nothing in this Convention shall be construed as to permit the functional activities of the United Nations personnel to go beyond the mandate approved by a resolution of the Security Council or that of the General Assembly."

F. Proposals by the United States of America

Insert the following in article 4 or article 9:

"States shall not detain United Nations personnel for acts taken in performance of an enforcement or a peace-keeping mission. If United Nations personnel engaged in such a mission are captured or detained, they shall be immediately released and returned to United Nations or other appropriate authorities, and pending release they shall be treated in accordance with the highest standards of human rights and the principles and spirit of the Geneva Conventions of 1949 relating to the treatment of prisoners of war."

Insert in article 2 a new paragraph 2, as follows:

"2. This Convention shall not apply where the operation was authorized by the Security Council as an enforcement action, the operation involves an international armed conflict to which common article 2 of the 1949 Geneva Conventions apply and the United Nations personnel are a party or otherwise engaged as combatants in the conflict."

G. Proposals by Guyana

Article 1

In paragraph 4, insert "whether natural or legal" after "person" in line 1. Insert "or has participated in the commission of" after "committed" in line 2.

Article 3

In subparagraph (a), replace "vessels" in line 2 by "vehicles".

Insert a new paragraph 2 reading:

"The fact that the property or personnel of the United Nations are not properly identified at the time of the commission of a crime shall not alone negate the criminal element of the act or omission, if there was reasonable certainty as to the special character and identity of that property or personnel".

Article 4

Replace "shall" in line 1 by "are under an obligation to".

Article 14

In paragraph 1, replace "persons's presence" in line 3 by "that person is brought before a court expeditiously".

Amendment to the proposal reproduced under section B above

The opening line of the proposal on "Basic protection and responsibility" could be redrafted more in keeping with the existing language of article 9 of the joint proposal by New Zealand and Ukraine, as follows:

"States Parties shall recognize a duty to ensure that United Nations and associated personnel enjoy, as a minimum ..."

This new article ideally should follow immediately after article 9.

H. Proposal by India

Insert a new article reading as follows:

"This Convention will apply to future peace-keeping operations and not to existing ones."